

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Annual Assessment of the Status of the)	
Competition in the Market for the)	MB Docket No. 06-189
Delivery of Video Programming)	

**COMMENTS OF THE LEAGUE OF MINNESOTA CITIES AND
THE MINNESOTA ASSOCIATION OF COMMUNITY
TELECOMMUNICATIONS ADMINISTRATORS**

These comments are submitted on behalf of the League of Minnesota Cities ("LMC") and the Minnesota Association of Community Telecommunications Administrators ("MACTA") in response to the Notice of Inquiry released by the Federal Communications Commission ("Commission") on October 20, 2006, in the above-referenced proceeding ("Inquiry").

The LMC and MACTA previously filed comments in the franchise proceeding, MB Docket No. 05-311, the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992. Of the many issues raised by the Commission in the Inquiry, the LMC and MACTA only have access to information regarding the actions of local governments related to the award of competitive franchises to promote wireline competition. Our comments will therefore focus on providing the Commission with data related to wireline competition in

Minnesota and the state procedures which have helped to ensure fair competition for all providers.

The LMC is a statewide cooperative association representing 829 cities, 12 townships and 48 special districts. There are only 24 cities in Minnesota that are not LMC members (each of which has a population of less than 120). The LMC was established in 1913 within the school of public affairs at the University of Minnesota. It became an independent association representing and serving cities in 1974. It is governed by a board of directors who are elected by the LMC membership.

MACTA is a non-profit association representing 105 cities and 9 townships in Minnesota. MACTA was formed in 1982 as a trade association supporting its member cities by providing educational, networking, and legislative/regulatory assistance in areas relating to cable television and telecommunications. MACTA members include cities, cable commissions, community cable TV facilities, and advisors working with these organizations.

INTRODUCTION

Minnesota local franchising authorities represented by the LMC and the MACTA (hereinafter collectively, "LFAs") embrace technological innovation and welcome competition in the delivery of cable services. LFAs in Minnesota have been managing communications competition for many years and are excited to embrace competition in the video arena. These comments will demonstrate that LFAs across Minnesota, some urban and some rural, have granted over 50 competitive cable franchises to a number of different competitive operators (see Exhibit A).¹ In virtually all of these cases the LFAs acted promptly to address applications from

¹ There are currently at least 46 communities in Minnesota with two or more competitive providers. In late 2005 six LFAs approved the transfer of their competitive franchises to the incumbent cable operator.

competitive providers in accordance with the state statutory franchising procedure.² LFAs have encouraged competition in the delivery of cable services consistent with state and federal law. LFAs look forward to working with competitive providers to ensure competition is promoted in a competitively neutral manner which does not favor either the incumbent or competitive operator.

LFAs in Minnesota share the Commission's concern regarding a lack of facilities based video competitors in the marketplace. Regardless of the LFA it is likely that communications technologies will be a driving force in the economic opportunities enjoyed by the communities that have access to advanced services. The Federal Cable Act as well as Minnesota Statutes Chapter 238 has provided significant benefits to consumers and LFAs alike. LFAs should be applauded for ensuring those benefits were provided in a timely, fair and efficient manner. Under the current regulatory regime the cable industry enjoys the highest deployment rate of broadband in the nation with well over 100 million homes having access to cable and non-cable services. LFAs' oversight and diligence, through the franchise process, has ensured that our constituents are not deprived of these services. Local government is the only entity that can adequately monitor and ensure rapid, safe and efficient deployment of cable services when they are being installed on a community by community level utilizing local rights-of-way.

LFAs play a critical role in promoting competition by ensuring that all competitors have fair access to necessary physical space and ensuring they do not interfere with each other's facilities. In addition, LFAs impose important public safety controls to ensure that communications facilities are compatible with water, sewer, gas, and electric infrastructure that also occupy the rights-of-way. It is local government that best manages these competing interests and therefore it is vital that LFAs retain authority to manage and control the public rights-of-way.

² Minn. Stat. § 238.081.

The concept of local franchising is to manage and facilitate, in an orderly and timely fashion, the use of the public rights-of-way. For LFAs this is true regardless of the industry they are franchising or whether they are providing for multiple competing communications services - all of which use the public rights-of-way. As the franchisor, LFAs have a fiduciary responsibility for which they are held accountable.

In the Inquiry the Commission asks for data related competition in the distribution of video programming. The LMC and MACTA have undertaken a review of LFAs in Minnesota to gather information in response to the Commission's questions.

1. *Local Exchange Carriers - Should video systems serve an entire jurisdiction?*

In Minnesota the dominant local exchange carrier ("LEC") is Qwest Communications. Qwest does not provide wireline video services, but rather partners with satellite providers to offer a video product as part of its bundled package of services. Qwest does not hold a cable franchise or video service agreement with any Minnesota LFAs. Several other independent LECs are offering wireline video services in competition with incumbent cable operators. Exhibit B attached hereto lists the ILECs which currently hold franchises in Minnesota.

For most LFAs the "franchise area" is defined to include the entire corporate boundaries of the jurisdiction, subject to certain density requirements. These density requirements vary depending upon a number of factors which may include whether the community is rural or urban and the manner in which the community has been developed.³ Often existing franchises will reference a "homes per cable mile" factor to dictate whether a cable operator must extend service to undeveloped portions of the franchise area. The density equivalent may range from 28 homes

³ Some communities may require a larger lot size per residential dwelling which may impact system build-out requirements.

per cable mile up to 60 homes per cable mile depending upon the jurisdiction in question, and whether the facilities to be installed are to be placed aerially or underground.

Minn. Stat. § 238.081 Subd. 10 also permits LFAs to enter joint powers agreements to form what is known in Minnesota as "cable commissions."⁴ Cable commissions in Minnesota generally take on one of two forms: 1) cable commissions in which all member municipalities delegate full authority to grant, deny and enforce a franchise; and 2) cable commissions in which member municipalities delegate some, but not all, power under Minnesota Statutes Chapter 238. In these cable commissions, municipalities typically retain authority to grant and deny a cable television franchise but may delegate authority to enforce franchise compliance.

The cable commission structure in Minnesota is relevant to competitive franchising as some cable commissions may assert that the franchise area for the cable commission encompasses all member municipalities, each of which must be served by a competing operator. By way of example, in the Minneapolis/St. Paul Metropolitan Area ("Metro Area") cable commissions may consist of 2-12 jurisdictions. Some of these cable commissions define a single franchise area to include all of the jurisdictions which are members of the cable commission. Other cable commissions may permit a competitive provider to serve one, but not all, of the jurisdictions represented by the cable commission. The cable commission structure also provides significant benefit to cable operators in that cable commissions create economies of scale. Applicants may only need to submit one application and seek award of a single franchise for a service area covering many separate jurisdictions. This structure may serve to expedite the franchising process and create uniformity in the franchise requirements for many continuous jurisdictions which share common needs.

⁴ Minn. Stat. § 238.081 subd (10) Franchise; joint powers. In the cases of municipalities acting in concert, the municipalities may delegate to another entity any duties, responsibilities, privileges, or activities described in this section, if the delegation is proper according to state and local law.

Cable commissions are most prevalent in the Metro Area and each of the cable commissions has faced one or more requests by competitive cable operators. In particular, in July of 2000 many Metro Area cable commissions were approached by Everest Connections and WideOpenWest seeking authority to construct systems to provide cable communications services. Each of the cable commissions that were approached followed the state statutory franchising procedure⁵ and many cable commissions and/or their individual members granted competitive franchises as soon as six months after the formal applications were received from these competitive providers. Ultimately, neither Everest Connections nor WideOpenWest accepted any of the franchises that were granted in the Metro Area.

2. *Where does wireline competition exist in Minnesota?*

The LMC and MACTA have polled their membership to ascertain information regarding the total number of competitive franchises that have been issued in the State of Minnesota. To the best of our knowledge, at least 46 communities in Minnesota presently have two or more franchised cable operators competing for subscribers (see Exhibit C). Interestingly, this number has recently been reduced from a high of 52 communities. In late 2005, the communities of St. Cloud, Sartell, Sauk Centre, Sauk Rapids, Waite Park and St. Joseph approved the transfer of cable franchises held by Serren Innovations, Inc. (d/b/a Astound) to Charter Communications. This transfer is unique in Minnesota as it resulted in the incumbent cable operator acquiring the system operated by the competing provider. The above-referenced communities had approved competitive franchises to Astound in 1998-99 and in late 2005 approved a transfer of those franchises to the incumbent cable operator, Charter Communications, resulting in only one franchised cable operator remaining in these communities.

⁵ Minn. Stat. § 238.081.

3. *How long does it take to grant a franchise in Minnesota?*

Minn. Stat. § 238.081 outlines a specific franchise procedure which must be followed prior to the award of a franchise in Minnesota. The statute, which has been in place for over 20 years, requires the LFA to publish once each week for two successive weeks in a newspaper of general circulation a notice of intent to consider an application for a franchise.⁶ The statute requires a list of specific information which the LFA must include in the notice.⁷ The LFA must also mail copies of the notice of intent to any persons or entities that the LFA has identified as being a potential candidate for a franchise.⁸

Proposals in response to a notice of intent to franchise may be submitted by interested parties and must include specific information as required by the statute. This information must include channel capacity, channel line-up, location of the head end, two-way capacity, local public, educational and governmental ("PEG") access channel capacity, a rate schedule, schedule for construction of the system, the applicant's legal, technical and financial qualifications, plans for financing and related matters.⁹

⁶ Minn. Stat. § 238.081 Subd. 1. Franchise renewals are not covered by this procedure.

⁷ Minn. Stat. § 238.081 Subd. 2. ***Required information in notice.*** The notice must include at least the following information: (1) the name of the municipality making the request; (2) the closing date for submission of applications; (3) a statement of the application fee, if any, and the method for its submission; (4) a statement by the franchising authority of the services to be offered; (5) a statement by the franchising authority of criteria and priorities against which the applicants for the franchise must be evaluated; (6) a statement that applications for the franchise must contain at least the information required by subdivision 4; (7) the date, time, and place for the public hearing, to hear proposals from franchise applicants; and (8) the name, address, and telephone number of the individuals who may be contacted for further information.

⁸ Minn. Stat. § 238.081 Subd. 3.

⁹ Minn. Stat. § 238.081 Subd. 4. ***Contents of franchising proposal.*** (a) The franchising authority shall require that proposals for a cable communications franchise be notarized and contain, but not necessarily be limited to, the following information: (1) plans for channel capacity, including both the total number of channels capable of being energized in the system and the number of channels to be energized immediately; (2) a statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission; (3) a description of the proposed system design and planned operation, including at least the following items: (i) the general area for location of antennae and the head end, if known; (ii) the schedule for activating two-way capacity; (iii) the type of automated services to be provided; (iv) the number of channels and services to be made available for access cable broadcasting; and (v) a schedule of charges for facilities and staff assistance for access cable broadcasting; (4) the terms and conditions under which particular service is to be provided to governmental and educational entities; (5) a schedule of proposed rates in relation to the services to be provided, and

The LFA must wait 20 days from the date it first published its notice of intent to set a closing date for submission of applications.¹⁰ Thereafter the LFA must hold a public hearing affording notice and a reasonable opportunity to be heard regarding the applications submitted.¹¹ Franchises can be awarded either by ordinance or other official action of the LFA.¹² This same procedure must be followed if a cable commission consisting of multiple LFAs chooses to work together to grant a cable franchise.¹³

Based on the foregoing, an application for a competitive franchise cannot be filed with an LFA sooner than 20 days from the first date of publication of a notice of intent. Upon receipt of an application the LFA must verify that the application provides the statutorily required information set forth in Minn. Stat. § 238.081 Subd. 4. At that point the LFA and applicant can engage in negotiations regarding the terms for a competitive franchise. As Exhibit B demonstrates, LFAs have generally been very efficient in completing negotiations for a competitive franchise with the time period ranging from eight weeks to 12 months.

It is also important to bear in mind that in Minnesota the construction season is often limited due to weather conditions. Thus if an application were to be submitted in the late fall the time pressure for completion of negotiations may not be as great as the competitor may not be

a proposed policy regarding unusual or difficult connection of services; (6) a time schedule for construction of the entire system with the time sequence for wiring the various parts of the area requested to be served in the request for proposals; (7) a statement indicating the applicant's qualifications and experience in the cable communications field, if any; (8) an identification of the municipalities in which the applicant either owns or operates a cable communications system, directly or indirectly, or has outstanding franchises for which no system has been built; (9) plans for financing the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital; (10) a statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director, and intracompany relationship including a parent, subsidiary, or affiliated company; and (11) a notation and explanation of omissions or other variations with respect to the requirements of the proposal. (b) Upon submission of a proposal, the municipality and applicant may negotiate franchise terms.

¹⁰ Minn. Stat. § 238.081 Subd. 5.

¹¹ Minn. Stat. § 238.081 Subd. 6.

¹² Minn. Stat. § 238.081 Subd. 7.

¹³ Minn. Stat. § 238.081 Subd. 10.

seeking authority to commence construction prior to the following spring. This is particularly true given that Minnesota Statutes Chapter 238 imposes upon a competitor a five year build-out requirement¹⁴ and therefore it is in the competitor's best interest to ensure that the franchise award date is granted so as to maximize the time available to meet the five year build-out requirement.¹⁵

It has been argued by some competitors in Minnesota that franchise negotiations have not proceeded as fast as they would like. However, it is important to recognize that every negotiation has two parties at the table. Some competitors have proposed franchise agreements which may not be consistent with Minnesota Statutes Chapter 238 or which subject the LFA to potential liability for more burdensome treatment of the incumbent cable operator vis-a-vis the new competitor. Competitors that seek build-out requirements which favor economically affluent neighborhoods or which seek to avoid connecting governmental and educational buildings to facilitate the exchange of local PEG access programming should not be allowed to argue that the franchising process is unduly complicated, protracted or burdensome. An attempt to seek a competitive advantage over an incumbent provider is a position LFAs cannot promote as it would violate the provisions of Minnesota Statutes Chapter 238 and/or the existing franchise agreement with the incumbent provider. LFAs strive to maintain a competitively neutral regulatory approach and delays in negotiations often are related to disputes over an LFA's attempt to maintain such competitive neutrality.

¹⁴ Minn. Stat. § 238.084 Subd. (m) a provision in initial franchises identifying the system capacity and technical design and a schedule showing: (1) that construction of the cable communications system must commence no later than 240 days after the granting of the franchise; (2) that construction of the cable communications system must proceed at a reasonable rate of not less than 50 plant miles constructed per year of the franchise term; (3) that construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise; and (4) that the requirement of this section be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

¹⁵ Minn. Stat. § 238.084 Subd. (m).

4. Are terms being proffered consistent with the requirements of Title VI?

Minnesota state law contemplates that no less than 30 specific issues must be addressed in any cable franchise.¹⁶ Most of these provisions have been in place since 1985. In 2004 the provisions of Section 238.084 were re-codified with minor amendments that were generally accepted by all interested parties. LFAs are not limited to these statutorily required provisions although it does provide a baseline for franchise negotiations.

Minnesota Statutes Chapter 238 also requires that:

*No municipality shall grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. The provisions of this paragraph shall not apply when the area in which the additional franchise is being sought is not actually being served by any existing cable communications system holding a franchise for the area. Nothing in this paragraph prevents a municipality from imposing additional terms and conditions on any additional franchises.*¹⁷

This provision is often referred to as Minnesota's "level playing field statute." This provision has been the source of considerable debate between incumbents and competitors particularly because incumbent cable operators have interpreted it to require that competitors serve the exact same franchise area as the incumbent. LFAs have generally relied on the fact that issuing a franchise is a quasi-judicial act based upon the relevant facts presented.¹⁸ Therefore some LFAs have argued in favor of greater flexibility to grant limited area franchises in an effort

¹⁶ Minn. Stat. 238.084.

¹⁷ Minn. Stat. § 238.08(b).

¹⁸ See In Reapplication of Dakota Telecommunications Group, 590 N.W.2d 644 (Minn. App. 1999).

to increase competition within their community. Other LFAs have argued that any competing cable operator should provide competition throughout the incumbent's franchise area to ensure that all of the LFA's residents are afforded the benefits of truly competitive cable services.

The most common approach taken by LFAs is to offer competitive providers the right to serve a jurisdiction under substantially the same terms and conditions which are contained in the incumbent's franchise. In many cases this has been acceptable to the competitive provider and the negotiations are completed quickly. In other cases there may be concerns raised by the competitive provider regarding the timing for build-out of the system,¹⁹ provision of PEG access programming, two-way connections to schools and other municipal buildings, and related matters. In these cases negotiations have taken longer to reach mutually acceptable terms (See Exhibit B).

One notable case in which a competitor alleged that the city may have been acting in a manner inconsistent with Title VI involved the City of Otsego, Minnesota ("City").²⁰ In 2001, WH Link, LLC ("WHL") filed an application with the Commission for certification to operate an open-video system ("OVS"). After the FCC approved the application WHL filed with the Commission a Notice of Intent to Establish an OVS in the City. After filing its Notice of Intent, WHL met with City officials regarding its plans to provide video programming in the City. The City took the position that Minnesota Statutes Chapter 238 required WHL to obtain a cable franchise in order to use the public rights-of-way. WHL disagreed contending that the state law franchise requirement²¹ was pre-empted by federal law.

¹⁹ Minn. Stat. § 238.084(m) establishes a maximum 5 year term to complete the build-out of a cable system in a franchise area.

²⁰ WH Link, LLC v. City of Otsego, 664 N.W.2d 390 (Minn.App. 2003, cert. den'd).

²¹ Minn. Stat. § 238.08.

After further negotiations WHL submitted a franchise application but asserted that it was exempt from the state law service area requirements arguing that WHL had authorization to provide cable services over its OVS in its telephone service area without being obligated to go beyond that service area through the imposition of any specific build-out or line extension obligations imposed by the City. The City approved WHL's application conditioned upon WHL's acceptance of a service area requirement. WHL rejected the service area requirement and informed the City that it viewed the imposition of the requirement as effectively denying its franchise application.

WHL then appealed the City's decision to the Minnesota Court of Appeals for certiorari review. The Court of Appeals concluded that the City was correct in its interpretation that Minnesota Statutes Chapter 238 required WHL to obtain a cable franchise for its OVS. The court further held that Minnesota's cable franchise requirement as applied to OVS does not conflict with federal law and that the state level playing field statute, in particular the service area requirement, is not preempted by federal law. Accordingly, the court affirmed the City's decision to require WHL to obtain a cable franchise which included a service area requirement as a condition of the grant of a franchise.²²

5. *What problems have cable incumbent's encountered with LFAs?*

Once an LFA issues a notice of intent to consider adopting a competitive franchise, incumbent cable operators typically pay close attention to the LFA's procedures and the terms which the LFA and the competitor may agree to in a competing franchise. Since Minnesota has very broad open meeting law requirements and equally broad data practices act requirements, incumbent cable operators are able to closely monitor the competitor's franchising process and negotiations. In certain cases incumbent cable operators have found that an LFA failed to follow

²² WH Link, LLC v. City of Otsego, 664 N.W.2d 390 (Minn.App. 2003, cert. den'd).

the required state statutory franchising procedure. In one case the Minnesota Court of Appeals held that the procedures provided in Minn. Stat. § 238.081 are “intended to safeguard open, deliberate and responsible government conduct on the matter of importance and concern to the ordinary citizen.”²³ In this case the court held that the city had failed to follow the proper statutory procedure and therefore its grant of a competitive franchise to Range TV Cable was set aside.

In another case the incumbent cable operator challenged an LFA’s attempt to grant a competitive franchise in accordance with the state procedure. On March 16, 1999 the Minnesota Court of Appeals found that the City of Marshall, Minnesota’s award of a competitive cable television franchise was proper and that the incumbent cable television operator lacked standing to appeal the City’s grant because it had not suffered a legally cognizable injury.²⁴ In 1999, Bresnan Communications Company (“Bresnan”) was the holder of a non-exclusive cable television franchise in the City of Marshall (this franchise is now held by Charter Communications). In early 1998, Dakota Telecommunications Group together with its wholly owned subsidiary Dakota Telecom, Inc. (hereinafter collectively “DTG”) approached the City seeking a competing cable television franchise. The City, following Minn. Stat. § 238.081, initiated a procedure to address DTG’s request. Following the issuance of franchise to DTG, Bresnan challenged the award claiming that the City acted arbitrarily and capriciously in granting DTG a franchise particularly with respect to DTG’s financial qualifications and that the City should have allowed Bresnan to cross examine the parties involved in the award of a franchise to DTG via a “contested case” proceeding.

²³ Triax Midwest Associates, L.P. v. City of Nashwauk, 1998 WL 865736 (Minn. App. 1998).

²⁴ In Reapplication of Dakota Telecommunications Group, 590 N.W.2d 644 (Minn. App. 1999).

The Court also reviewed whether the City Council's grant of a franchise to DTG was a quasi-judicial act subject to appeal by a writ of certiorari. The Court concluded that the City's grant was a quasi-judicial proceeding but concluded that Bresnan's appeal was barred because Bresnan lacked standing. The Court held that Bresnan had simply alleged a "potential economic injury to its nonexclusive franchise" from the introduction of an identical franchise into the local cable communications market. Bresnan did not allege an injury resulting from unfair competition in violation of the Cable Act. The Court found that because the Cable Act was enacted to encourage such competition, "not to prevent an incumbent's loss of profits," Bresnan had not asserted a legally cognizable injury sufficient to establish standing.

The Court went on to find that even if Bresnan had standing to contest the City's grant of DTG's franchise, the City had properly supported its grant with substantial evidence and thus did not act arbitrarily or capriciously in making its decision. The Court held that neither federal or state laws provide guidance on how a franchising authority is to "consider" an applicant's financial ability. The Court held that the City properly focused on DTG's ability to construct and initially operate its proposed system and therefore the City "sufficiently considered substantial evidence of DTG's financial condition."²⁵

Finally, Bresnan argued that the City violated its due process rights in refusing to hold a "contested case" hearing following its decision to grant DTG's cable franchise. However, the Court found that the City considered Bresnan's franchise rights throughout its negotiations with DTG. Moreover, the Court reasoned that Bresnan's nonexclusive franchise rights are not deprived by the introduction of a nonexclusive franchise into the local cable communications

²⁵ *Id.*

market. Under such circumstances, the Court held that the City did not abuse its discretion in denying Bresnan's request for a contested case hearing.²⁶

6. *Should cable service requirements vary greatly from jurisdiction to jurisdiction?*

As discussed earlier, Minn. Stat. § 238.084 outlines no less than 30 specific issues which must be addressed in any cable franchise.²⁷ However, the statute is structured in a manner in which minimum guidelines are established for all cable franchises but LFAs are permitted to negotiate cable service requirements which vary from jurisdiction to jurisdiction depending upon relevant factors. These factors may include the location of the jurisdiction; topography; population base; needs of the educational community; interest in governmental access programming; interest in local community/public access programming; and related factors.

LFAs in Minnesota have a robust history of embracing local community programming including PEG access programming. Many communities have active local production studios which create programming for carriage on local PEG access channels of interest to the jurisdiction. Whether it is video coverage of governmental meetings, information about government services or special programs, school lunch menus, homework assignments or classroom instruction, the video programming used to disseminate this information allows the LFAs to better serve and interact with their constituents. In communities where needs have been identified in support of local community programming, cable service requirements may include provisions regarding dedicated channel capacity, interconnection of governmental and school facilities and appropriate capital funding for local programming. Many Metro Area jurisdictions also have institutional network requirements which permit the exchange of PEG programming from multiple locations and interconnect with neighboring jurisdictions. Other more rural

²⁶ *Id.*

²⁷ See footnote 9 *infra*.

communities may not share the same needs and interests and cable service requirements may differ in those jurisdictions.

The current legal structure under the Cable Act and Minnesota Statutes Chapter 238 maintains authority for local decisions about local community needs. While some LFAs may require significant capacity for PEG channels or institutional network use, other LFAs may seek little or none. The ideologies and values of each local community guide their elected leaders. The one size fits all approach is not the most efficient or reasonable means of achieving deployment of communications services. In fact, a one size fits all approach can penalize communities with differing needs. For example, no one would claim that the needs of Minneapolis and St. Paul are the exact same as the needs of the City of Ely, in northern Minnesota. These communities would not impose their desires upon each other and yet both should have the ability to ascertain their individual needs and work with their cable providers accordingly.

7. *Are certain cable service requirements no longer needed in light of competition in the MVPD marketplace?*

Minnesota Statutes Chapter 238 (updated in 2004) already creates a degree of uniformity between franchises from jurisdiction to jurisdiction based on the minimum specifications required at Minn. Stat. § 238.084. The main focus of franchise agreements in Minnesota is to address issues of rights-of-way usage, customer service requirements, appropriate liability, indemnification and enforcement provisions, local community programming and institutional network obligations and provisions regarding compensation for the use of the rights-of-way. Given that federal law already relieves cable operators of all rate regulations once effective

competition has been established, elimination of other cable service requirements would not be in the consumers' best interests.

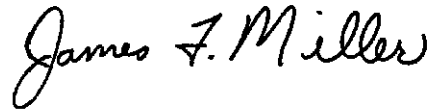
CONCLUSION

LFAs in Minnesota are enthusiastic about the benefits that competing cable operators may offer to our constituents. The LFAs strongly support competition, the roll-out of new services, and the economic growth that accompanies the installation of new systems with new technology. The LFAs believe that promoting competition and addressing our constituents' reasonable needs and interests justify a thoughtful, well-conceived and deliberative process. The LFAs oppose requirements which would limit their flexibility in addressing local community needs and interests and/or force an unreasonable time table on the granting of a competitive franchise that may ultimately not be in their constituents' best interests. It is also crucial that the authority of LFAs to manage their public rights-of-way be maintained to ensure and protect the public health, safety and welfare.

In the final analysis the LFAs believe that the current regulatory structure set forth in the Cable Act and Minnesota Statutes Chapter 238 has worked effectively to promote competition in Minnesota. As can be seen in Exhibit A, competition exists in every portion of the state from a variety of different competitors. The process has worked well to address local community needs while maintaining competitive neutrality between incumbents and their new competitors. LFAs face pressure from their constituents every day to enhance competitive choices in their community for the provision of a variety of services including cable services. LFAs will continue to work aggressively toward the goal of promoting competition and granting competitive franchises in an efficient, fair and competitively neutral manner.

Respectfully submitted,

LEAGUE OF MINNESOTA CITIES



By: _____
James F. Miller, Executive Director

**MINNESOTA ASSOCIATION OF COMMUNITY
TELECOMMUNICATIONS ADMINISTRATORS**



By: _____
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Dated: November 29, 2006

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EXHIBIT A

MINNESOTA COMMUNITIES WITH COMPETITIVE CABLE OPERATORS



EXHIBIT B

Demographic and General Data for Minnesota Cities with Franchises Granted to Competitive Cable Operators

Population and Household Data: 2004 Data from State Demographer All Other Data: U.S. Census (2000)

	City	County Name	2004 Pop.	2004 Households	1999 Median Household Income	2000 Pop.	Competitive Franchise Application Date	Franchise Award Date	Competitive Cable Operator	Competitive Franchise Expiration	Incumbent Operator	Incumbent Franchise Expiration
1.	Albertville	Wright	5,368	1,972	\$58,260	3,621	Not available	Not available	FTTH	Not available	Charter	Not available
2.	Becker	Sherburne	3,749	1,306	\$50,714	2,673	9/18/2001	11/7/2001	Connections	2018	US Cable	2016
3.	Bemidji	Beltrami	12,962	5,096	\$28,072	11,917	10/1/2001	5/6/2002	Paul Bunyan TV	5/6/2017	Charter	12/31/2013
4.	Big Lake	Sherburne	8,303	2,901	\$50,658	6,063	2003	2003 temp. permit	Connections	2/1/2021	Charter	1/1/2020
5.	Brainerd/ Baxter	Crow Wing	13,798/ 6,887	5,894/ 2,465	\$26,901/ \$52,289	13,178/ 5,555	2004	1/1/2005	Consolidated Telecom Co./Nextera Comm.	3/1/2020	Charter	3/1/2020
6.	Caledonia	Houston	2,953	1,242	\$32,455	2,965	6/1/2003	11/21/2003	HBC-Ace Cable	10/10/2014	Mediacom	10/10/2014
7.	Chokio	Stevens	421	194	\$34,107	443	8/31/2000	10/16/2000	Federated Telephone	10/16/2010	Mediacom	4/14/2008
8.	Cohasset	Itasca	2,556	1,009	44,054	2,481	2004-2005	2005	Paul Bunyan	2020	Mediacom	2020 - Renewed in 2005
9.	Dodge Center	Dodge	2,486	933	\$39,453	2,226	Unsure	8/12/2003	KMTelecom	8/12/2018	Mediacom	1/26/2014
10.	Faribault	Rice	22,218	8,030	\$40,865	20,818	1/2006	5/2006	HickoryTech	5/2021	Charter	2008
11.	Fergus Falls	Otter Tail	13,780	5,837	\$31,454	13,471	9/1/2000	12/19/2000	Park Region Telephone	3/1/2015	Charter	3/1/2015
12.	Goodview	Winona	3,301	1,409	\$43,654	3,373	8/1997	10/13/1997	Hiawatha	10/13/2012	Charter	1/31/2015
13.	Grand Rapids	Itasca	8,478	3,813	\$28,991	7,764	3/11/2004	12/6/2004	Paul Bunyan Rural Telephone	12/6/2019	Mediacom	Unsure - 15 years
14.	Litchfield	Meeker	6,801	2,760	\$36,021	6,562	6/1/1999	11/1/1999	Hutchinson Telecom	8/20/2011	Mediacom	8/20/2011
15.	Luverne	Rock	4,588	1,986	\$36,271	4,617	1998	7/13/1998	PrairieWave	2013	Mediacom	2016
16.	Mankato	Blue Earth	34,597	13,561	\$33,956	32,427	5/2006	10/13/2006	HickoryTech	11/2021	Charter	9/23/2011
17.	Marshall	Lyon	12,874	5,104	\$37,950	12,735	3/13/1998	4/27/1998	PrairieWave	6/17/2013	Charter	8/13/2013

	City	County Name	2004 Pop.	2004 Households	1999 Median Household Income	2000 Pop.	Competitive Franchise Application Date	Franchise Award Date	Competitive Cable Operator	Competitive Franchise Expiration	Incumbent Operator	Incumbent Franchise Expiration
18.	Melrose	Stearns	3,256	1,235	\$34,432	3,091	Not Available	11/3/2005	Melrose Telephone	11/3/2020	Charter	1/16/2018
19.	Montrose	Wright	421	194	\$34,107	443	5/9/2005	8/22/2005	Lakedale Telephone	8/13/2013	Time Warner	8/13/2013
20.	Morris	Stevens	1,892	776	\$39,583	1,143	7/28/2000	10/4/2000	Home Town Solutions	2/15/2006	Mediacom	2/14/2011
21.	New Prague	Scott	6,046	1,552	\$41,750	4,559	2/1/2004	6/1/2004	BevComm, Inc.	5/1/2015	Time Warner	4/1/2015
22.	New Ulm	Brown	13,936	5,673	\$40,044	13,594	6/9/2000	8/22/2000	New Ulm Telecom	8/22/2015	Comcast	2/2/2014
23.	No. Mankato	Blue Earth	12,489	5,168	\$48,816	11,798	5/2006	10/16/2006	HickoryTech	11/2021	Charter	11/1/2011
24.	Otsego	Wright	9,893	3,271	\$57,422	6,389	5/6/2002	10/28/2002	WH Link	10/28/2017	Charter	10/28/2017
25.	Park Rapids	Hubbard	3,432	1,571	\$23,628	3,276	11/1998	5/11/1999	Arvig	5/21/2009	Charter	3/10/2006
26.	Paynesville	Stearns	2,282	973	\$34,000	2,267	Approx. 12/9/2004	5/17/2005	Lakedale Telephone	8/19/2017	Mediacom	8/19/2017
27.	Pipestone	Pipestone	4,369	1,922	\$30,412	4,280	6/1/1998	1/13/1999	PrairieWave	8/15/2015	Mediacom	8/15/2015
28.	Redwood Falls	Redwood	5,348	N/A	\$38,812	5,459	10/31/2001	5/7/2002	NU Telecom	5/22/2017	Mediacom	2/7/2012
29.	Rosemount	Dakota	17,740	6,004	\$65,916	14,619	1/1/2002	7/2/2002	FTTH Communications	7/2/2017	Charter	6/1/2014
30.	Rushford	Fillmore	1,781	760	\$37,159	1,696	early 2003	6/23/2003	Ace Telephone	6/23/2018	Mediacom	1/22/2011
31.	St. Charles	Winona	3,502	1,339	\$42,813	3,295	9/26/2002	10/22/2002	HBC	9/26/2017	Mediacom	10/18/2008
32.	St. James	Watonwan	4,630	1,849	\$33,196	4,695	6/1/1998	11/16/1998	PrairieWave	12/1/2013	Mediacom	9/1/2013
33.	St. Peter	Nicollet	10,401	3,262	\$40,344	9,747	City issued RFP in 1999	11/13/2000	HickoryTech	11/2015	Mediacom	11/2015
34.	Slayton	Murray	2,054	920	\$36,500	2,072	10/16/1998	3/23/1999	PrairieWave	12/1/2014	Mediacom	12/1/2014
35.	Sleepy Eye	Brown	3,610	1,489	\$37,123	3,515	1/1/2003	4/1/2003	Sleepy Eye Digital TV	6/1/2010	Mediacom	6/1/2010
36.	Springfield	Brown	2,191	905	\$34,643	2,215	4/15/2003	5/20/2003	Nu-Telecom	9/2/2018	Mediacom	9/2/2018
37.	Staples	Todd	3,137	1,108	\$25,208	3,104	6/1/2004	4/15/2005	Arvig	4/15/2020	Charter	12/27/2020
38.	Tracy	Lyon	2,185	905	\$31,356	2,268	6/1/1999	Renewed in 2005	PrairieWave	12/31/2014	Charter	12/31/2014
39.	Wabasha	Wabasha	2,655	1,093	\$35,291	2,599	5/2005	6/7/2005	Hiawatha	5/2011	US Cable	5/2011
40.	Wadena	Wadena	4,248	1,875	\$26,947	4,294	1/1/2004	5/11/2004	Arvig	9/21/2009	Charter	9/21/2009
41.	Waseca	Waseca	9,691	3,480	\$39,554	8,493	3/15/2004	7/6/2004	HickoryTech	7/1/2019	Mediacom	7/1/2019

	City	County Name	2004 Pop.	2004 Households	1999 Median Household Income	2000 Pop.	Competitive Franchise Application Date	Franchise Award Date	Competitive Cable Operator	Competitive Franchise Expiration	Incumbent Operator	Incumbent Franchise Expiration
42.	Wells	Rice	2,537	1,066	\$26,463	2,494	2/24/2006	3/27/2006	Bevcomm	3/27/2021	Mediacom	7/9/2016
43.	Willmar	Kandiyohi	18,659	7,472	\$33,455	18,351	11/15/2000	11/21/2001	En-Tel	11/21/2016	Charter	11/21/2016
44.	Winona	Winona	27,221	10,440	\$32,845	27,069	4/28/1997	7/28/1997	Hiawatha	12/31/2015	Charter	12/31/2015
45.	Worthington	Nobles	11,307	4,335	\$36,250	11,283	4/16/1998	8/1/1998	PrairieWave	8/1/2013	Mediacom	6/1/2012
46.	Zimmerman	Sherburne	4,098	1,422	\$49,332	2,851	1999	approx. 1999	US Cable	approx. 2008	Connections	approx. 2019

EXHIBIT C

MINNESOTA COMMUNITIES WITH COMPETITIVE CABLE SERVICE²⁸

1. Albertville
2. Becker
3. Bemidji
4. Big Lake
5. Brainerd/ Baxter
6. Caledonia
7. Chokio
8. Cohasset
9. Dodge Center
10. Faribault
11. Fergus Falls
12. Goodview
13. Grand Rapids
14. Litchfield
15. Luverne
16. Mankato
17. Marshall
18. Melrose
19. Montrose
20. Morris
21. New Prague
22. New Ulm
23. North Mankato
24. Otsego
25. Park Rapids
26. Paynesville
27. Pipestone
28. Redwood Falls
29. Rosemount
30. Rushford
31. St. Charles
32. St. James
33. St. Peter
34. Slayton
35. Sleepy Eye
36. Springfield
37. Staples
38. Tracy
39. Wabasha
40. Wadena
41. Waseca
42. Wells
43. Willmar
44. Winona
45. Worthington
46. Zimmerman

²⁸ There are currently at least 46 communities in Minnesota with two or more competitive providers. In late 2005 six LFAs approved the transfer of their competitive franchises to the incumbent cable operator.

CERTIFICATE OF SERVICE

A copy of the attached comments were sent this 29th day of November, 2006, via first-class mail, postage prepaid thereon to the following:

Contact	Address	City	State	Zip	Title
1. Larry Kruse	5975 Main Ave NE	Albertville	MN	55301-0009	Admin
2. Dennis Coryell	13190 Memorywood Dr	Baxter	MN	56425-2626	Admin
3. Nancy Fiereck	12060 Sherburne Ave	Becker	MN	55308	Clerk
4. David Minke	317 4th St NW	Bemidji	MN	56601-3116	Mgr
5. Patrick Wussow	160 Lake St N	Big Lake	MN	55309-9254	Admin
6. Daniel Vogt	501 Laurel St	Brainerd	MN	56401-3595	Admin/Clk/Treas
7. Robert L. Nelson	231 East Main Street	Caledonia	MN	55921	Clerk/Admin
8. Geraldine Ritter	221 Main Street	Chokio	MN	56221-0036	Clk/Treas
9. Debra Sakrison	305 NW 1 st Avenue	Cohasset	MN	55721-9698	Clk/Treas
10. Linda Nagel	23 West Main Street	Dodge Center	MN	55927-0430	Assist to Admin
11. Michelle Mahowald	208 1 st Avenue NW	Faribault	MN	55021-5180	Assist to Admin
12. Mark Sievert	112 W Washington	Fergus Falls	MN	56538-0868	Admin
13. Daryl Zimmer	4140 W 5th St	Goodview	MN	55987-1599	Admin
14. Edward Treska	420 N Pokegama Ave	Grand Rapids	MN	55744-2662	Admin
15. Bruce Miller	126 N Marshall Ave	Litchfield	MN	55355-2110	Admin
16. John Call	203 E Main St	Luverne	MN	56156-0659	Admin
17. Denny Kemp	10 Civic Center Plaza	Mankato	MN	56002-3368	
18. Michael Johnson	344 W Main St	Marshall	MN	56258-1313	Admin
19. Patti Haase	225 E First Street North	Melrose	MN	56352	Clerk
20. Barbara Swanson	311 Buffalo Ave. S.	Montrose	MN	55363-0025	Admin/Clk/Treas
21. Edward Larson	609 Oregon Ave	Morris	MN	56267-0438	Mgr
22. Jerome Bohnsack	118 Central Ave N	New Prague	MN	56071-1534	Admin
23. Brian Gramentz	100 N Broadway	New Ulm	MN	56073-0636	Mgr
24. Denny Kemp	1001 Belgrade Avenue	North Mankato	MN	56002-2055	
25. Michael Robertson	8899 Nashua Ave NE	Otsego	MN	55330-7314	Admin
26. Margie Vik	212 2nd Street West	Park Rapids	MN	56470-1507	Clerk
27. Steve Helget	221 Washburne Ave	Paynesville	MN	56362-1642	Admin
28. Jeffrey Jones	119 2nd Ave SW	Pipestone	MN	56164-1683	Admin
29. Keith Muetzel	333 S Washington St	Redwood Falls	MN	56283-0010	Admin
30. James Verbrugge	2875 145th St W	Rosemount	MN	55068-4941	Admin
31. Kathy Zacher	101 North Mill Street	Rushford	MN	55971-0430	Clk/Treas
32. Crystal Prentice	830 Whitewater Ave	St. Charles	MN	55972-1298	Admin
33. Michael Williams	400 2nd Street South	St. Cloud	MN	56301-3699	Admin
34. LeeAnn Nibbe	124 Armstrong Blvd S	St. James	MN	56081-0070	Clk/Treas
35. Judy Weyrens	25 College Avenue North	St. Joseph	MN	56374	Admin
36. Todd Prafke	227 S Front St	St. Peter	MN	56082-2513	Admin
37. Patti Gartland	125 Pinecone Road N.	Sartell	MN	56377-0140	Admin

Contact	Address	City	State	Zip	Title
38. RoseAnn Inderrieden	320 Oak St S	Sauk Centre	MN	56378-1225	Admin
39. Ross Olson	115 2nd Ave N	Sauk Rapids	MN	56379-1605	Admin
40. Cathy Magnus	2424 26th St	Slayton	MN	56172-1244	Admin/Clk
41. Mark Kober	200 Main St. E	Sleepy Eye	MN	56085-1638	Mgr
42. Malcolm Tilberg	2 East Central Street	Springfield	MN	56087-1608	Mgr
43. Gerald Brever	611 Iowa Avenue East	Staples	MN	56479-2224	Admin
44. Audrey Koopman	336 Morgan St	Tracy	MN	56175-1230	Admin
45. David Schmidt	900 Hiawatha Dr	Wabasha	MN	55981-0268	Admin
46. Bradley Swenson	222 2nd St SE	Wadena	MN	56482-0030	Admin
47. Shaunna Johnson	19 13th Ave N	Waite Park	MN	56387-1066	Admin/Clk/Treas
48. Kris Busse	508 S State St	Waseca	MN	56093-3097	Mgr
49. Ronda Allis	125 South Broadway	Wells	MN	56097-1627	Admin
50. Kevin Halliday	333 SW 6th Street	Willmar	MN	56201-0755	Clerk
51. Eric Sorensen	207 Lafayette	Winona	MN	55987-0378	Mgr
52. Robert Filson	303 9th St	Worthington	MN	56187-0279	Admin
53. Greg Lafond	12980 Fremont Ave	Zimmerman	MN	55398-9414	Admin